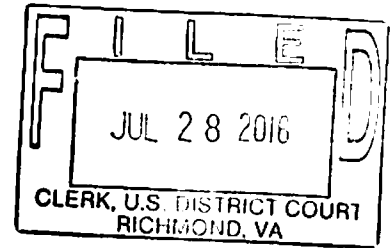


**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**



KENNETH NEWKIRK,

Plaintiff,

V.

WARDEN FLEMING, *et al.*,

**Defendants.**

Civil Action No. 3:16CV369-HEH

**MEMORANDUM OPINION**  
**(Dismissing Without Prejudice 42 U.S.C. § 1983 Action)**

Kenneth Newkirk, a Virginia inmate proceeding *pro se*, submitted this action and requested leave to proceed *in forma pauperis*. The pertinent statute provides:

In no event shall a prisoner bring a civil action [*in forma pauperis*] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.


28 U.S.C. § 1915(g).

Newkirk has at least three other actions or appeals that have been dismissed as frivolous or for failure to state a claim. *See, e.g., Newkirk v. Shaw*, No. 3:14CV426–HEH, 2014 WL 4161991, at \*3 (E.D. Va. Aug. 19, 2014); *Newkirk v. Cir. Ct. of Hampton*, No. 3:14CV372–HEH, 2014 WL 4072212, at \*3 (E.D. Va. Aug. 14, 2014); *Newkirk v. Lerner*, No. 3:13CV364–HEH, 2014 WL 587174, at \*2–5 (E.D. Va. Feb. 14, 2014); *Newkirk v. Chappell*, No. 3:13CV73–HEH, 2013 WL 5467232, at \*3 (E.D. Va. Sept. 30, 2013). Newkirk’s current complaint does not demonstrate that he is imminent

danger of serious physical harm. Accordingly, the Court will deny Newkirk's request to proceed *in forma pauperis*. The Court will dismiss the action without prejudice to Newkirk's refiling of the action accompanied by the full \$400.00 filing fee.

An appropriate Order will accompany this Memorandum Opinion.

Date: July 28, 2016  
Richmond, Virginia

 /s/  
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HENRY E. HUDSON  
UNITED STATES DISTRICT JUDGE